

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 INTERNATIONAL GAME TECHNOLOGY,  
11 et al.,

12 Plaintiff(s),

13 v.

14 ILLINOIS NATIONAL INSURANCE CO.,

15 Defendant(s).  
16

Case No. 2:16-cv-02792-APG-NJK

ORDER

(Docket No. 32)

17 Pending before the Court is Plaintiffs' motion to compel production of documents and deposition  
18 testimony. Docket No. 32. Defendant filed a response in opposition. Docket No. 36. Plaintiffs filed  
19 a reply. Docket No. 37. Plaintiffs ask the Court to compel Defendant to produce: (1) documents in  
20 response to Plaintiffs' requests for production 2, 3, 6, 7, and 11; (2) deposition witnesses David  
21 Standish, Bradley Vatr, James McQuaid, and Luigi Spadafora; and (3) a Rule 30(b)(6) deposition  
22 witness for deposition topics 1-11, 13-27, and 31-35. Docket No. 32. The Court finds the matter  
23 properly resolved without oral argument. Local Rule 78-1. For the reasons discussed below, the motion  
24 to compel is **GRANTED** in part and **DENIED** in part.

25 **I. BACKGROUND**

26 On September 22, 2017, Plaintiffs filed the instant motion to compel Defendant's responses to  
27 various requests for production of documents, produce four witnesses for deposition, and produce a Rule  
28 30(b)(6) deposition witness on various topics. Docket No. 32. Generally, Plaintiffs submit that the

1 requested documents and the information to be derived from the depositions are relevant to their breach  
2 of contract claim. Docket No. 32 at 13-14, 19-20, 22-23. Plaintiffs have filed a motion for leave to file  
3 an amended complaint asserting bad faith claims, which is currently pending, and acknowledge that  
4 many of their requests would be “even more relevant” if the motion for leave to file an amended  
5 complaint is granted. Docket No. 37 at 2; *see also* Docket No. 32 at 20. In response, Defendant  
6 generally submits that Plaintiffs’ requests are irrelevant to the breach of contract claim, although  
7 Defendant concedes that the requests could be relevant to bad faith claims. Docket No. 36-1 at 3, 5, 7.  
8 Defendant also submits that certain information is confidential, cumulative, or duplicative to information  
9 that has already been provided in documents propounded to Plaintiffs or that will be provided in a Rule  
10 30(b)(6) deposition. *Id.* at 8, Docket No. 36-2 at 1. In reply, Plaintiffs generally submit that Defendant  
11 fails to cite to binding case law that Plaintiffs’ requests are irrelevant and cumulative. Docket No. 37  
12 at 5.

## 13 **II. STANDARDS**

14 “[B]road discretion is vested in the trial court to permit or deny discovery.” *Hallett v. Morgan*,  
15 296 F.3d 732, 751 (9th Cir. 2002); *see also Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). Parties  
16 are entitled to discover non-privileged information that is relevant to any party’s claim or defense and  
17 is proportional to the needs of the case, including consideration of the importance of the issues at stake  
18 in the action, the parties’ relative access to relevant information, the parties’ resources, the importance  
19 of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery  
20 outweighs its likely benefit. Fed.R.Civ.P. 26(b)(1). The most recent amendments to the discovery rules  
21 are meant to curb the culture of scorched earth litigation tactics by emphasizing the importance of  
22 ensuring that the discovery process “provide[s] parties with efficient access to what is needed to prove  
23 a claim or defense, but eliminate unnecessary or wasteful discovery.” *Roberts v. Clark Cty. School Dist.*,  
24 312 F.R.D. 594, 603-04 (D. Nev. 2016).

25 When a party fails to provide requested discovery, the requesting party may move to compel that  
26 discovery. *See* Fed.R.Civ.P. 37(a). Conversely, a party from whom discovery is sought may move for  
27 a protective order. *See* Fed.R.Civ.P. 26(c). For good cause shown, courts may issue a protective order  
28 to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

1 *See id.*; *see also* Fed.R.Civ.P. 26(b)(2)(C) (courts must limit frequency or extent of discovery that is  
2 otherwise permissible if that discovery is unreasonably cumulative or duplicative, or can be obtained  
3 from some other source that is more convenient, less burdensome, or less expensive). When a discovery  
4 dispute is presented through the filing of a motion to compel and that motion is denied, courts may enter  
5 any protective order authorized under Rule 26(c). *See* Fed.R.Civ.P. 37(a)(5)(B).

### 6 **III. REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### 7 **A. Request for Production 2**

8 All Documents and Communications relating to the negotiation, underwriting, drafting,  
9 issuance, placement and/or renewal of the Illinois National Policy, including but not  
10 limited to all Documents and Communications constituting, consisting of or contained  
in Your underwriting file for the Illinois National Policy, including any IGT application  
or underwriting submission for or in connection with the Illinois National Policy.

11 Docket No. 32-4 at 14.

12 Defendant objected to this request on grounds that is it, *inter alia*, unintelligible, vague,  
13 ambiguous, and unduly burdensome. Docket No. 32-5 at 6. Defendant further objected to this request  
14 because information regarding the underwriting of Plaintiffs' policy with Defendant does not affect the  
15 coverage issues that are raised by Plaintiffs' breach of contract claim and, therefore, is irrelevant. *Id.*

16 Plaintiffs submit that underwriting information is relevant to their breach of contract claim  
17 because it could provide information on the parties' intent when drafting the policy and what  
18 requirements Plaintiffs allegedly failed to complete. Docket No. 32 at 14-15. In response, Defendant  
19 submits that underwriting information is irrelevant as extrinsic information, and is discoverable only if  
20 Plaintiffs had alleged ambiguities in the policy language. Docket No. 36-1 at 3. Defendant, however,  
21 fails to cite to any binding case law that underwriting files are irrelevant to a breach of contract claim.  
22 *Id.* at 3, 4.

23 The relevancy of underwriting and policy drafting history information is not exclusive to cases  
24 that involve bad faith claims. *See, Renfrow v. Redwood Fire & Cas. Ins. Co.*, 288 F.R.D. 514, 521 (D.  
25 Nev. 2013) (finding that underwriting files are relevant to claims of breach of contract and bad faith);  
26 *see also Phillips v. Clark Cty. Sch. Dist.*, 2012 U.S. Dist. LEXIS 5309, \*11-14 (D. Nev. Jan. 18, 2012);  
27 *Olin Corp. v. Cont'l Cas. Co.*, 2011 U.S. Dist. LEXIS 98177, \*9-10 (D. Nev. Aug. 30, 2011). In  
28 *Phillips*, the Court overruled the defendant's objections to the relevancy of documents related to the

1 underwriting files and negotiations of the insurance policy at issue without specifying the relevancy only  
2 to the bad faith claims. *Philips*, 2012 U.S. Dist. LEXIS 5309, at \*33. Underwriting information, as well  
3 as policy drafting history, is relevant and, therefore, discoverable in a breach of contract claim because  
4 it indicates what the coverage included and also whether the insurer failed to meet its obligation. *Olin*,  
5 2011 U.S. Dist. LEXIS 98177, at \*9-10.

6 In *Olin*, the Court found that underwriting information was relevant to the defendant's  
7 affirmative defenses that the insured failed to comply with an applicable policy provision and that the  
8 claim at issue fell outside of the insured's policy, even though those affirmatives defenses were  
9 conditional. *Id.* In the instant case, Defendant raises similar affirmative defenses: that Plaintiffs failed  
10 to provide timely notice that they were involved in litigation, as required by the policy, and their claim  
11 was barred by the policy. Docket Nos. 32 at 14, 32-11, 36 at 8.

12 Accordingly, the Court GRANTS Plaintiffs' motion regarding request for production number  
13 2, and orders Defendant to provide all responsive, non-privileged information requested by December  
14 15, 2017.

15 B. Request for Production 3

16 All Documents and Communications relating to the meaning, purpose,  
17 interpretation, application, and scope of the terms, provisions, conditions, and/or  
exclusions of the Illinois National Policy, including but not limited to:

18 a. all Documents and Communications relating to the definitions of "Wrongful  
19 Act" in the Illinois National Policy, including the definitions in the BASE section  
and TECH module of the Policy;

20 b. all Documents and Communications relating to the definition of "Claim" in the  
Policy;

21 c. all Documents and Communications relating to the definition of "Professional  
22 Services" in the Policy, including the definition in the TECH Module of the  
Policy;

23 d. all Documents and Communications relating to the definition of "Loss" in the  
24 Policy;

25 e. all Documents and Communications relating to Exclusion (b) in the Policy;

26 f. all Documents and Communications relating to Exclusion (o) in the Policy;

27 g. all Documents and Communications relating to Exclusion (r) in the Policy; and

28 h. all Documents and Communications relating to the Exclusion contained in  
Endorsement No. 24 of the Illinois National Policy.

1 Docket No. 32-4 at 14-15.

2 Defendant objected to this request on grounds that it is ambiguous, vague, and unduly  
3 burdensome. Docket No. 32-5 at 7-8. Defendant further objected to this request, *inter alia*, because “the  
4 meaning, purpose, interpretation, application, and scope of policy provisions are questions of law.” *Id.*  
5 at 8.

6 The parties disagree on the first step required to permit extrinsic evidence to prove the meaning  
7 of an ambiguous term or provision. Plaintiffs submit that the meanings of certain terms and provisions  
8 are relevant to their breach of contract claim because Defendant’s interpretations of certain terms and  
9 provisions differ with Plaintiffs’ interpretations, giving rise to a conflict over the “reasonable  
10 expectations of coverage.” Docket Nos. 32 at 14-16, 27 at 19. In response, Defendant submits that  
11 extrinsic evidence can be used only to interpret ambiguous terms. Docket No. 36-1 at 3-4. Defendant  
12 further submits, without citing binding case law, that Plaintiffs cannot now identify any ambiguities in  
13 the policy language in discovery motions when they failed to do so in their complaint. *Id.* at 4. In reply,  
14 Plaintiffs submit that extrinsic evidence is relevant even when only “the potential that such evidence  
15 may show key policy terms to be ambiguous” exists. Docket No. 37 at 5.

16 Although Plaintiffs did not identify specific terms or provisions as ambiguous in their complaint,  
17 extrinsic evidence is nonetheless relevant even when policy language initially appears unambiguous.  
18 *Phillips*, 2012 U.S. Dist. LEXIS 5309, at \*12. Plaintiffs interpret this rule on potentially ambiguous  
19 terms to mean that a party does not have to identify ambiguities in the policy language in order to request  
20 information to clarify policy terms and provisions. The Court agrees. In *Phillips*, the Court overruled  
21 the defendant’s objections to the relevancy of information relating to the interpretation of the policy  
22 terms and exclusions to coverage on grounds that extrinsic evidence may “reveal[] more than one  
23 possible meaning to which the language of the contract is susceptible.” *Id.* at \*12, 35.

24 Further, Courts “generally decline to decide the issue of ambiguity on a motion to compel  
25 production.” *Phillips*, 2012 U.S. Dist. LEXIS 5309, at \*13. Engaging in this analysis would  
26 unnecessarily increase the Court’s involvement in the discovery process, especially given the  
27 understanding that information within the scope of discovery need not be admissible as evidence to be  
28 discoverable. *See* Fed.R.Civ.P. 26(b)(1); *see also Phillips*, 2012 U.S. Dist. LEXIS 5309, at \*13;

1 *Cardoza v. Bloomin' Brands*, 141 F. Supp. 3d 1137, 1144 (D. Nev. 2015) (“discovery is supposed to  
2 proceed with minimal involvement of the Court”) (quoting *F.D.I.C. v. Butcher*, 116 F.R.D. 196, 203  
3 (E.D. Tenn. 1986)).

4 Accordingly, the Court GRANTS Plaintiffs’ motion regarding request for production number  
5 3, and orders Defendant to provide all responsive, non-privileged information requested by December  
6 15, 2017.

7 C. Request for Production 6

8 All "Claims Manuals," however such manuals are denominated, during the period of  
9 2011 through present day, relating to the handling of claims under general liability,  
10 media content, and/or errors & omissions policies issued and/or subscribed and/or  
underwritten by You.

11 Docket No. 32-4 at 16.

12 Defendant objected to this request as irrelevant to Plaintiffs’ breach of contract claim. Docket  
13 No. 32-5 at 11. Defendant further objected to this request, *inter alia*, because it seeks information  
14 containing trade secrets and proprietary information. *Id.*

15 Plaintiffs submit that claims manuals are relevant to their breach of contract claim because they  
16 could provide information as to Plaintiffs’ alleged failure to meet requirements for coverage. Docket  
17 No. 32 at 14. In response, Defendant submits that claims manuals cannot alter the meaning of  
18 unambiguous terms and submits the same arguments it previously raised regarding the use of extrinsic  
19 evidence to interpret ambiguous terms. Docket No. 36-1 at 5.

20 Claims manuals and claims handling information are relevant in breach of contract cases. *See*  
21 *Renfrow*, 288 F.R.D. at 521; *see also Phillips*, 2012 U.S. Dist. LEXIS 5309, at \*34 (finding relevant  
22 claims bulletins, guidelines, or memorandum relating to claims adjusting, “documents reciting company  
23 philosophies and policies regarding claims handling policies,” procedural or operational manuals which  
24 instruct employees on their responsibilities, and procedures and guidelines for reviewing and  
25 determining claims for coverage); *Olin*, 2011 U.S. Dist. LEXIS 98177, at \*9-10 (finding relevant  
26 “general company-wide manuals, guidelines, [and] claims-handling procedures...”). The Court finds  
27 that claims handling manuals or guidelines are relevant even when a claim of bad faith has not been  
28 made because such documentation could reveal if Plaintiffs provided insufficient information in seeking

1 coverage under their policy or if general claims handling guidelines are inconsistent with the  
2 requirements of Plaintiffs' policy.

3 Accordingly, the Court GRANTS Plaintiffs' motion as it relates to request for production number  
4 6, and orders Defendant to provide all responsive, non-privileged information requested by December  
5 15, 2017.

6 D. Request for Production 7

7 All "Underwriting Manuals," however such manuals are denominated, used by You  
8 during the period of 2011 through present day, relating to the underwriting, drafting,  
9 generation, or sale of general liability, media content, and/or errors & omissions policies  
issued and/or subscribed and/or underwritten by You.

10 Docket No. 32-4 at 16.

11 Defendant objected to this request as irrelevant and disproportionate to the subject matter of the  
12 litigation. Docket No. 32-5 at 11. Defendant further objected to this request, *inter alia*, because it seeks  
13 information containing trade secrets and proprietary information, and because it is unduly burdensome  
14 and increases the cost of litigation. *Id.* at 12.

15 Plaintiffs submit that underwriting manuals are relevant to their breach of contract claims for the  
16 same reasons they submit claims manuals are relevant. *See supra*, Section III(C). In response,  
17 Defendant objects to the relevancy of underwriting manuals for the same reasons it objects to the  
18 relevancy of claims manuals. *Id.*

19 Where claims manuals are relevant to a breach of contract claim, underwriting manuals are also  
20 relevant to that claim. *See Phillips*, 2012 U.S. Dist. LEXIS 5309, at \*34 (finding relevant documents  
21 on the procedures and guidelines for reviewing and determining underwriting applications for  
22 insurance); *see also Olin*, 2011 U.S. Dist. LEXIS 98177, at \*9-10 (finding relevant "general company-  
23 wide manuals, guidelines...").

24 Accordingly, the Court grants Plaintiffs' motion as it relates to request for production number  
25 7, and orders Defendant to provide all responsive, non-privileged information requested by December  
26 15, 2017.

1 E. Request for Production 11

2 All Documents and Communications relating to Your investigation, handling,  
3 evaluation, assessment and/or adjustment of the SGI Claim, including but not limited to  
4 any investigation into SGI, any Documents or Communications with any other insurer(s)  
5 of SGI, Global Draw and/or Barcrest, and/or any other third parties, and/or Your decision  
6 to deny coverage for the SGI Claim as referenced in Paragraph 11 of Exhibit A, and/or  
Your decision to defend and/or pay at least a portion of the SGI Claim as referenced in  
paragraph 15 of Exhibit A, including but not limited to all Documents and  
Communications constituting, consisting of, or contained in any claim file maintained  
by You, however any such file is denominated.

7 Docket No. 32-4 at 16-17.

8 Defendant objected to this request on the grounds that it is unintelligible, ambiguous, vague, and  
9 unduly burdensome. Docket No. 32-5 at 14, 16. Defendant further objected to this request, *inter alia*,  
10 as irrelevant because the information concerns a non-party's policy, claim, or lawsuit with Defendant.  
11 *Id.* at 14.

12 Plaintiffs submit that information regarding non-party Scientific Games Inc.'s ("SGI") policy  
13 with Defendant and claim is relevant because SGI's policy is "substantially similar" to Plaintiffs' policy  
14 with Defendant and SGI's claim under this policy is based on similar facts and events as Plaintiffs'  
15 claim. Docket No. 32 at 3. Therefore, Plaintiffs submit, Defendant's handling of SGI's claim could  
16 provide better understanding on how Defendant handled Plaintiffs' claims. *Id.* at 23. In response,  
17 Defendant submits that how it handled SGI's claim would not change the facts of how it handled  
18 Plaintiffs' claim, as each claim was submitted under different policies. Docket No. 36-1 at 6. Defendant  
19 further submits that providing information regarding SGI's policy and claim would reveal "commercially  
20 sensitive and private insurance and settlement information," and that SGI "may hold valid privileges and  
21 confidentiality agreements and may not consent to the production." *Id.* at 8. In reply, Plaintiffs submit  
22 that this information is not confidential, as is evidenced by SGI's disclosure of certain documents  
23 without expressing concerns of providing confidential information or a commercial advantage to  
24 Plaintiffs as SGI's competitor. Docket No. 37 at 11-12. Plaintiffs further submit that SGI's policy is  
25 "inextricably tied" to Defendant's handling of Plaintiffs' claim because Defendant provided coverage  
26 to SGI under its policy for reasons it should have provided coverage to Plaintiffs. *Id.*

27 Information regarding other lawsuits and claims under policies that are identical to the policy  
28 at issue are discoverable in a breach of contract claim because how those issues were resolved "may



show that identical language has been afforded various interpretations by the insurer.” *Phillips*, 2012 U.S. Dist. LEXIS 5309, at \*14 (internal citation omitted). The Court imposes limits, however, on the “scope, time frame, or number of other similar claims” or lawsuits about which a party requests information. *Id.* at \*15.<sup>1</sup> In the instant case, Plaintiffs ask for such information in regard to only one claim and one policy held by non-party SGI. The *Phillips* Court found that such information is relevant and overruled the defendant’s objection that production would be “unduly burdensome” because the defendant failed to provide sufficient details as to the “time, money, and procedures required to produce the requested documents.” *Id.* at \*38-39. The Court finds that the information requested in request number 7 is relevant and proportionate to the needs of the case.

Accordingly, the Court GRANTS Plaintiffs’ motion as it relates to request for production number 7, and orders Defendant to provide all responsive, non-privileged information requested by December 15, 2017.

#### **IV. FACT WITNESS DEPOSITIONS**

A. David Standish, Bradley Vatr, James McQuaid

Mr. Standish, Mr. Vatr, and Mr. McQuaid are all current employees of Defendant’s parent company, American International Group, Inc. Docket No. 32 at 5. Mr. Standish worked on Plaintiffs’ claim after Defendant denied coverage under Plaintiffs’ policy. Docket No. 36-2 at 2. Mr. Vatr worked on SGI’s claims. *Id.* Mr. McQuaid supervised all claim handlers that worked on Plaintiffs’ claim. *Id.* Plaintiffs noticed the depositions of Mr. Standish and Mr. Vatr on June 28, 2017. Docket Nos. 32-7, 32-8. Plaintiffs noticed the deposition of Mr. McQuaid on July 27, 2017. Docket No. 32-9. Plaintiffs submit that these employees’ knowledge is relevant as to Defendant’s claim handling conduct. Docket No. 32 at 19. In response, Defendant submits that claim handling information from these employees is cumulative and duplicative of the Rule 30(b)(6) deposition and documents it has already produced, is irrelevant as to a breach of contract claim and as to SGI’s claim, and that the employees “were not

---

<sup>1</sup> In *Phillips*, the defendant had identified two lawsuits and ten claims as potentially responsive to the plaintiff’s requests. *Id.* at 39-42. Although the Court ultimately found the ten claims as unresponsive to the plaintiff’s requests, it nonetheless indicated that amount of discovery was not unduly burdensome to produce. *Id.* at 39-40.

1 directly involved in the coverage analysis.” Docket No. 36-2 at 1-2. In reply, Plaintiffs submit that  
2 irregardless of the degree of the employees’ involvement, Plaintiffs have a right to depose the employees  
3 to determine the extent of their knowledge of and involvement in handling Plaintiffs’ claim. Docket No.  
4 37 at 8-9.

5 The Court has found that claims handling information is relevant in a breach of contract claim.  
6 *See supra*, Section III(C). Moreover, Defendant has already produced certain claim files, therefore  
7 conceding to its relevance. Docket No. 36-2 at 1. The Court has also previously found that information  
8 regarding other lawsuits and claims under policies that are identical to the policy at issue are  
9 discoverable in a breach of contract claim. *See supra*, Section III(D).

10 Additionally, courts have rejected the argument that a Rule 30(b)(6) deposition and a percipient  
11 witness deposition are unnecessary or cumulative of one another based simply on the similarity of topics  
12 covered. *See, e.g., Louisiana Pac. Corp. v. Money Market 1 Institutional Inv. Dealer*, 285 F.R.D. 481,  
13 487 (N.D. Cal. 2012) (collecting cases). Indeed, courts have permitted the deposition testimony of even  
14 high-ranking corporate officers with unique insight or personal involvement in the events at issue that  
15 cannot be discovered through less intrusive means, notwithstanding Rule 30(b)(6) testimony on those  
16 issues. *See, e.g., Apple Inc. v. Samsung Elecs. Co.*, 282 F.R.D. 259, 264-65 (N.D. Cal. 2012) (rejecting  
17 argument that Samsung's CEO could not be deposed as a percipient witness given Rule 30(b)(6)  
18 designee's testimony on the same subject matter). In determining whether to permit both a Rule 30(b)(6)  
19 deposition and a percipient witness deposition on overlapping issues, the court must ensure that there  
20 is sufficient utility in the percipient witness deposition such that it is not unnecessary or wasteful. *Cf.*  
21 *Roberts*, 312 F.R.D. at 603-04.

22 In the instant case, certain deposition topics and the information to be derived from Mr. Standish,  
23 Mr. Vatr, and Mr. McQuaid overlap. *See* deposition topics number 5-6, 11, 13-15, 18-27, and 31-32,  
24 Docket Nos. 32-6 at 9-14, 32 at 9-11. However, because Mr. Standish, Mr. Vatr, and Mr. McQuaid  
25 worked on matters relevant to Plaintiffs’ discovery requests, the Court finds that there is sufficient utility  
26 in their depositions, such that the depositions are not unnecessary nor cumulative, especially considering  
27 that a Rule 30(b)(6) deposition has yet to occur.

1 Accordingly, the Court GRANTS Plaintiffs' motion as it relates to the depositions of Mr.  
2 Standish, Mr. Vatrt, and Mr. McQuaid, and orders Defendant to produce the witnesses for depositions  
3 by January 15, 2018.

4 B. Luigi Spadafora

5 On June 28, 2017, Plaintiffs noticed the deposition of Mr. Spadafora. Docket No. 32-10.  
6 Defendant objected to Mr. Spadafora's deposition as irrelevant and "protected either as work product  
7 or as an attorney-client privileged communication." Docket No. 32-3 at 17. Plaintiffs submit that  
8 neither the work product doctrine nor attorney-client privilege can prevent Mr. Spadafora from providing  
9 deposition testimony because, although he is an attorney, he served Defendant in his capacity as a claims  
10 handler, not as counsel. Docket No. 32 at 21. Plaintiffs submit that the factors provided in *Couturier*  
11 *v. Am. Invsco Corp.* (as adopted from the Eight Circuit case *Shelton v. Am. Motors Corp.*), which  
12 determine whether a party may depose opposing counsel, are inapplicable because Mr. Spadafora did  
13 not serve as counsel for Defendant but, instead, performed "a business function of claims handler" as  
14 is exhibited by his letter sent to Plaintiffs' counsel.<sup>2</sup> *Id.*; see also *Couturier v. Am. Invsco Corp.*, 2013  
15 U.S. Dist. LEXIS 118001, at \*4 (D. Nev. Aug. 20, 2013) (adopting the factors as set in *Shelton v. Am.*  
16 *Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986)).

17 In response, Defendant submits that Mr. Spadafora "was retained to provide legal advice" as  
18 "outside coverage counsel." Docket No. 36-2 at 3, 5. Defendant does not contend that Mr. Spadafora  
19 did not also serve in a business function but rather cites to non-binding case law that "an attorney's  
20 investigation is protected if such tasks are related to the rendition of legal services." *Id.* at 5. Defendant  
21 further submits that Mr. Spadafora is not an employee of Defendant and, therefore, Defendant "cannot  
22 control" his presence at a deposition. *Id.* In reply, Plaintiffs submit that they are entitled to determine,  
23 through a deposition, Mr. Spadafora's role in handling Plaintiffs' claim. Docket No. 37 at 9.

24 Defendant submits that Mr. Spadafora is not its employee and that it does not exercise control  
25 over him. Docket No. 36-2 at 5. Therefore, Defendant does not have standing to object to the

---

26  
27 <sup>2</sup> Plaintiffs use the letter sent by Mr. Spadafora to Plaintiffs' counsel to identify his role in the matter  
28 which consisted of reviewing information from Plaintiffs in opposition to Defendant's coverage  
determination. Docket No. 32-11 at 2.

1 deposition of a non-party witness. The Court discussed at length Defendant's lack of standing in  
2 objecting to the depositions of non-party witnesses in its order on Defendant's motion for protective  
3 order. Docket No. 45. The Court will not repeat its previous analysis here but will provide a brief  
4 recapitulation of its findings.

5 Fed.R.Civ.P. 26(c) permits a party or non-party from whom discovery is sought to file a motion  
6 for a protective order. Plaintiffs do not seek documents in possession of Defendant nor do they seek any  
7 other discovery from Defendant through Mr. Spadafora's deposition. Therefore, the Court finds that  
8 Defendant does not have standing to object to Mr. Spadafora's deposition. Moreover, the proper motion  
9 in objecting to a non-party deposition is a motion to quash, filed by the non-party, in "the court for the  
10 district where compliance is required." Fed.R.Civ.P. 45(d)(3). Although the record does not show that  
11 Plaintiffs have subpoenaed Mr. Spadafora, the deposition notice indicates that the deposition is set to  
12 take place in Chicago, IL. Docket No. 32-10. Accordingly, the Court further finds that it does not have  
13 jurisdiction to compel the deposition of a non-party witness, nor would it have jurisdiction over a motion  
14 to quash a subpoena where compliance is required outside of the District of Nevada.<sup>3</sup>

#### 15 **V. RULE 30(b)(6) DEPOSITION TOPICS**

16 Plaintiffs' Rule 30(b)(6) deposition notice includes 35 topics of examination.<sup>4</sup> Docket No. 32-6.  
17 Although Defendant objected to Plaintiffs' Rule 30(b)(6) deposition topics in its letter to Plaintiffs'  
18 counsel on August 22, 2017, Defendant's response in opposition to Plaintiffs' motion to compel fails  
19 to adequately address Defendant's objections to each deposition topic, and meaningfully addresses only  
20 topic numbers 27 and 35. Docket No. 32-3. *Cf. Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 582  
21 n.3 (D. Nev. 2013) (courts only address arguments that are meaningfully developed). Additionally,  
22 "[t]he party resisting discovery bears the burden of showing why a discovery request should be denied"  
23 by specifying in detail, as opposed to general and boilerplate objections, why "each request is  
24

---

25 <sup>3</sup> The Court therefore does not reach the issue of whether Mr. Spadafora's deposition is either  
26 relevant or protected as privileged.

27 <sup>4</sup> Exhibit A of Plaintiffs' 30(b)(6) deposition notice includes the topics of examination. Docket No.  
28 32-6. However, beginning on page 12, Plaintiffs incorrectly numbered the topics of examination by re-  
starting at number 23, as opposed to continuing to number 25. *Id.* at 12-13.

1 irrelevant.” *FTC v. AMG Servs.*, 291 F.R.D. 544, 553 (D. Nev. 2013) (internal citation omitted).  
2 Therefore, without any meaningfully developed argument articulating, in detail, why specific deposition  
3 topics should be denied as irrelevant, the Court does not address deposition topics 1-11, 13-26, nor 31-  
4 34.

5 Deposition topic number 27 requests information regarding the factual bases for Defendant’s  
6 affirmative defenses. Docket Nos. 32-6 at 12 (incorrectly labeled as topic number 25), 32 at 11  
7 (correctly labeled as topic number 27). Plaintiffs submit that claims handling information is relevant  
8 where affirmative defenses allege that coverage is barred because of terms and exclusions in a policy  
9 or because of the insured’s failure to perform obligations under a policy. Docket No. 32 at 20. In  
10 response, Defendant submits that information about its affirmative defenses is irrelevant “to any claim  
11 or defense that has been asserted by any party,” while simultaneously submitting it is willing to provide  
12 a Rule 30(b)(6) deposition witness to testify as to the facts supporting Defendant’s position that  
13 Plaintiffs’ policy does not provide coverage. Docket No. 36-2 at 6. Defendant acknowledges that the  
14 facts supporting its position that Plaintiffs’ policy does not provide coverage “are the same facts that  
15 support its fact-based defenses in this action.” *Id.* Therefore, the Court finds that Defendant does not,  
16 in fact, meaningfully object to deposition topic number 27. Accordingly, the Court GRANTS Plaintiffs’  
17 motion as it relates to deposition topic number 27.

18 Deposition topic number 35 requests information regarding the termination of Daniel Godsill’s  
19 employment by Defendant’s parent company, American International Group, Inc., and “the disposition  
20 of” any files pertaining to his work on Plaintiffs’ claim. Docket Nos. 32-6 at 13 (incorrectly labeled as  
21 topic number 33), 32 at 12 (correctly labeled as topic number 35). Plaintiffs submit that this information  
22 is relevant because it relates to claims handling information in connection with Defendant’s affirmative  
23 defenses. Docket No. 32 at 20. In response, Defendant submits that disclosure of personnel files is  
24 irrelevant and goes against public policy. Docket No. 36-2 at 6.

25 Information of a claim handler’s qualifications, training, and any disciplinary actions taken as  
26 a result of claim handling is relevant only in cases with bad faith claims. *See McCall v. State Farm Mut.*  
27 *Auto. Ins. Co.*, 2017 U.S. Dist. LEXIS 117250, at \*28-29 (D. Nev. July 26, 2017). As the instant case  
28

1 does not include bad faith claims, the information is irrelevant. Therefore, the Court DENIES Plaintiffs'  
2 motion as it relates to deposition topic number 35.

3 **VI. CONCLUSION**

4 For the reasons discussed above, the Court hereby **GRANTS** in part and **DENIES** in part  
5 Plaintiffs' motion to compel production of documents and deposition testimony. Docket No. 32. The  
6 Court **ORDERS** Defendant to produce documents in response to Plaintiffs' requests for production 2,  
7 3, 6, 7, and 11, by December 15, 2017. The Court **FURTHER ORDERS** Defendant to produce David  
8 Standish, Bradley Vatr, and James McQuaid for depositions by January 15, 2018. The Court finds that  
9 Defendant does not have standing to object to the non-party deposition of Luigi Spadafora and that the  
10 Court does not have jurisdiction over a motion to quash a deposition occurring outside the District of  
11 Nevada. The Court **FURTHER GRANTS** Plaintiffs' motion to compel regarding topic number 27 in  
12 their Rule 30(b)(6) deposition notice and **DENIES** Plaintiffs' motion as it relates to deposition topic  
13 number 35. The parties shall schedule and hold a Rule 30(b)(6) deposition no later than December 15,  
14 2017.

15 IT IS SO ORDERED.

16 DATED: November 16, 2017

17  
18   
19 \_\_\_\_\_  
20 NANCY J. KOPPE  
21 United States Magistrate Judge  
22  
23  
24  
25  
26  
27  
28